

APPENDIX D: LETTER FROM U.S. FISH AND WILDLIFE SERVICE



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
4000 Morrie Avenue
Cheyenne, Wyoming 82001

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Director's Office

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Subject _____

ES-61411
gw/W.25/WY2800

August 26, 1999

Memorandum

To: Job Captain, National Park Service, Denver Service Center, Planning and Design Services

From: Field Supervisor, Ecological Services, Cheyenne, Wyoming (ES-61411) *[Signature]*

Subject: Species List for Devils Tower National Monument

Thank you for your letter received in this office August 13, regarding the initiation of a general management plan for Devils Tower National Monument. My staff has determined that the following threatened, endangered or proposed species may be present in the monument area.

Species	Status	Expected Occurrence
Black-footed ferret (<i>Mustela nigripes</i>)	Endangered	Potential resident in prairie dog (<i>Cynomys</i> sp.) colonies.
Bald eagle (<i>Haliaeetus leucocephalus</i>)	Threatened	Nesting. Winter resident. Migrant.
Mountain plover (<i>Charadrius montanus</i>)	Proposed	Grasslands statewide
Ute ladies'-tresses (<i>Spiranthes diluvialis</i>)	Threatened	Moist soils near wetland meadows, springs, lakes, and perennial streams.

Black-footed ferrets

Black-footed ferrets may be effected if prairie dog colonies are impacted (surface disturbing activities, etc.). If black-tailed prairie dog (*Cynomys ludovicianus*) colonies or complexes greater than 79 acres will be impacted, surveys for ferrets should be conducted even if only a portion of the colony or complex will be disturbed. If a field check indicates that prairie dog towns may be affected, you should contact this office for guidance on ferret surveys.

Mountain plover

In the Federal Register dated February 16, 1999, the U.S. Fish and Wildlife Service gave notice of a proposal to list the mountain plover (*Charadrius montanus*) as a threatened species pursuant to the Endangered Species Act of 1973, as amended. Available data indicate that population numbers have declined range-wide by more than 50 percent since 1966 to fewer than 10,000 birds. The mountain plover is a small bird associated with shortgrass prairie, plains, alkali flats, agricultural lands, cultivated lands, sod farms, prairie dog towns, and shrub-stepped landscapes at both breeding and wintering locales. Plovers may nest on sites where vegetation is sparse or absent, or near closely cropped areas, manure piles or rocky areas. Mountain plovers are rarely found near water and show a preference for previously disturbed areas or modified habitat.

Ute ladies'-tresses

Ute ladies'-tresses is a perennial terrestrial orchid with stems 20 to 50 cm tall, narrow leaves, and flowers consisting of few to many small white or ivory flowers clustered into a spike arrangement at the top of the stem. It blooms from late July through August, however, depending on location and climatic conditions, orchids may bloom in early July or still be in flower as late as early October. The Ute ladies'-tresses is endemic to moist soils near wetland meadows, springs, lakes, and perennial streams. It occurs generally in alluvial substrates along riparian edges, gravel bars, old oxbows, and moist to wet meadows at elevations from 4,200 to 7,000 feet. The orchid colonizes early successional riparian habitats such as point bars, sand bars, and low lying gravelly, sandy, or cobble edges, persisting in those areas where the hydrology provides continual dampness in the root zone through the growing season. Recent discoveries of additional orchid colonies in Wyoming and Montana indicate that surveys for and inventories of orchid occurrences continue to be an important part of orchid recovery planning and implementation.

In order to recover the orchid, it is important that surveys be conducted in areas of potential habitat and in response to impending impacts. Ute ladies'-tresses seems generally intolerant of shade and is found primarily in open grass and forb-dominated sites where vegetation is relatively open and not dense or overgrown. The plants usually occur as small scattered groups. Ute ladies'-tresses orchid can only be reliably located and identified when it is flowering, which typically occurs sometime during the period from mid-July through mid-September. Surveys are conducted by walking or otherwise closely scrutinizing areas of potential habitat looking for flowering stalks. Surveys conducted at other times of the year are not reliable and are therefore not acceptable to the Service for purposes of clearance under section 7 of the ESA. Surveys should be conducted by knowledgeable botanists trained in conducting rare plant surveys. The Service does not maintain a list of "qualified" surveyors but can refer those wishing to become familiar with the orchid to experts who can provide training/services.

Ute ladies'-tresses is not known to occur in or near the monument area. However, few if any surveys for these areas have been conducted. Given the known distribution of the orchid and the character of the watersheds, it is possible that the orchid could be discovered. If any suitable habitat for the orchid is found (survey guidelines attached), the Service strongly recommends the National Park Service to support survey efforts on federal land. If it is determined that any

Federal agency program or project "is likely to adversely affect" any listed species, formal consultation should be initiated with this office. Alternatively, informal consultation can be continued so we can work together to determine how the project could be modified to reduce impacts to listed species to the "not likely to adversely affect" threshold.

Federal agencies are also encouraged to consider sensitive species or species at risk in project review. Your consideration of these species is important in preventing their inclusion on the Threatened and Endangered Species List. The Wyoming Natural Diversity Database maintains the most current information on sensitive plants in Wyoming.

Migratory Birds

Please recognize that consultation on listed species may not remove your obligation to protect the many species of birds, raptors, and eagles protected under the Migratory Bird Treaty Act (MBTA) and Bald and Golden Eagle Protection Act (BGEPA).

The MBTA, 16 U.S.C. 703, enacted in 1913, prohibits the taking of any migratory birds, their parts, nests, or eggs except as permitted by regulations and does not require intent to be proven. Section 703 of the Act states, "Unless and except as permitted by regulations ... it shall be unlawful at any time, by any means or in any manner, to ... take, capture, kill, attempt to take, capture, or kill, or possess ... any migratory bird, any part, nest, or eggs of any such bird..." The BGEPA, 16 U.S.C. 668, prohibits knowingly taking, or taking with wanton disregard for the consequences of an activity, any bald or golden eagles or their body parts, nests, or eggs, which includes collection, molestation, disturbance, or killing.

Work that could lead to the take of a migratory bird or eagle, their young, eggs, or nests (for example, if you are going to erect new campgrounds, climbing routes, roads, etc.), should be coordinated with our office before any actions are taken. Removal or destruction of such nests, or causing abandonment of a nest could constitute violation of the above statutes. Removal of nests or nest trees is prohibited, but may be allowed once young have fledged and/or a permit has been issued. In either case, timing is a significant consideration and you need to allow for this in your project planning.

We appreciate your efforts to ensure the conservation of endangered and threatened species. If you have any further questions, please contact Jerry Williams (307) 772-2374, ext. 24.

cc: Director, WGFD, Cheyenne, WY
Non-game Coordinator, WGFD, Lander, WY